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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/638,570	08/14/2000	Roger William Gutwein	7721M	9947

27752 7590 07/30/2003

THE PROCTER & GAMBLE COMPANY
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EXAMINER

WEIER, ANTHONY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 07/30/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/638,570

Applicant(s)

GUTWEIN ET AL.

Examiner

Anthony Weier

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 9-54 is/are pending in the application.
- 4a) Of the above claim(s) 16-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>11</u> | 6) <input type="checkbox"/> Other: |

1. This application contains claims 16-54 drawn to inventions nonelected with traverse in Paper No. 8. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.
2. Claims 1, 4-6, and 9-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Stover (U.s. Patent No. 4,579,048).

The claims stand rejected for the reasons set forth in the last Office Action (Paper No. 9, mailed 2/12/03).

3. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stover as discussed above.

The claims stand rejected for the reasons set forth in the last Office Action (Paper No. 9, mailed 2/12/03).

4. Applicants' arguments filed 5/16/03 have been fully considered but they are not persuasive.

Applicants argue that Stover does not teach Applicants' system-contained customization. However, the Examiner disagrees, with respect to the claims as broadly claimed. The instant claims call for system of preparing an individually customized coffee beverage. It should be first noted that the instant claims are described as "system" claims and have been treated as "apparatus" claims. Without more specific recitation, it is not clear that the intended "system" invention is made up of the apparatus *and* material specifically worked on. (Is this what Applicants have intended? If so, amending the claims to better define this may be in order.) Stover, however, discloses an apparatus which has the capacity to be used for customizing individual

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quantities of coffee in certain aspects. Certainly the substrate used for brewing may be changed in the apparatus. Also, Stover specifically discloses at least one other aspect of customizing (i.e. beverage strength, paragraph bridging columns 6 and 7).

Applicants argue that Stover teaches away from customization by use of a automatic controls therein. However, as discussed above, certain aspects of customization are within the scope of the Stover apparatus, for example, the inherent choice of beverage substrate used and the apparatus ability to facilitate changing beverage strength.

Applicants further argue that Stover does not teach specific customization of a coffee beverage. Although Stover specifically addresses the treatment of tea beverages, it is disclosed that the apparatus of Stover is intended for coffee as well (e.g. col. 1, paragraph 2). However, the Examiner contends that the treatment of coffee is intended use of the instant claims considered as apparatus claims. Moreover, Stover discloses and suggests aspects of the apparatus which would fulfill the limitations as broadly claimed. Applicants further argue that Stover does not teach one how to brew coffee. However, the Examiner contends that these are process considerations and, again, the instant claims have been examined as apparatus claims.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action (i.e. claims 7 and 8 were cancelled). Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 703-308-3846. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.


Anthony Weier
Primary Examiner
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Anthony Weier
July 28, 2003


7/28/03